

JAMES VALJALO

IBLA 80-818

Decided September 30, 1980

Appeal from a decision of the Montana State Office, Bureau of Land Management, dismissing appellant's protest of the nonreinstatement of oil and gas lease M-31346-0.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

APPEARANCES: James Valjalo, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

James Valjalo appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dismissing his protest directed to the nonreinstatement of oil and gas lease M-31346-0.

BLM notified appellant on June 10, 1980, that oil and gas lease M-31346-0 terminated effective May 1, 1980, for nonpayment of annual rental. Appellant's check for the rental had been received by BLM on June 9, 1980, 39 days after the May 1, 1980, anniversary date. The letter from BLM stated the oil and gas lease could not be reinstated because the rental was not received within 20 days after the anniversary date of the lease pursuant to 43 CFR 3108.2-1(c). Appellant submitted a letter of protest which set forth the reasons for the delinquent rental payment. On June 27, 1980, BLM dismissed appellant's protest. That decision stated:

It is the responsibility of the lessee to be aware that the Act of July 29, 1954, provides that an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities, automatically terminates by operation of law if the lessee fails to pay the full rental due on or before the anniversary date of the lease. The Notice of Rental Due is only a reminder of the date the rental is due. It is still the lessee's responsibility to be sure that the rental is received in this office on or before the anniversary date.

Under the Act of May 12, 1970, the Secretary of the Interior has no authority to reinstate an oil and gas lease, unless the rental payment is tendered at the proper office within 20 days after the due date, as the statute only empowers him to reinstate leases so paid and none other.

Since your rental payment was not received within 20 days after the due date, reinstatement of the lease cannot be considered. Accordingly your protest is dismissed.

Appellant stated in his letter of protest that he and his wife had been under a doctor's care in the months preceding the oil and gas lease anniversary. Appellant also asserted that he did not receive the courtesy billing statement due to his recent change of address, although he had notified BLM of the change.

[1] The requirements for reinstatement are set forth in 30 U.S.C. § 188(c) (1976), which provides in part:

[W]here any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease * * *. [Emphasis added.]

In order for a petition for reinstatement to be granted, the rental must thus be paid within 20 days of the due date. Here payment was due on or before May 1, so that the 20-day period expired May 20, 1980. Payment was not received until June 9, 1980. Despite the hardship set forth by appellant, the Secretary has no authority to reinstate a terminated lease unless payment has been tendered within

20 days of the due date, as the statute only empowers him to reinstate leases so paid and none other. Beatrice G. Wood, 42 IBLA 148 (1979). Even if the "justifiable" or "due diligence" requirements were met, the lease may not be reinstated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Frederick Fishman
Administrative Judge

